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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,559	08/05/2003	Howard Sommerfeld	WAB 03209	6026

7590 11/22/2004  
JAMES RAY & ASSOCIATES  
2640 Pitcairn Road  
Monroeville, PA 15146

EXAMINER

LE, MARK T

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 11/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/634,559	Applicant(s) SOMMERFELD, HOWARD <span style="float: right;">S</span>	
	Examiner Mark T. Le	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 October 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 6-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☒ Claim(s) 11 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Applicant's election with traverse of Species I, claims 1-5 and 11-12 in the reply filed on October 18, 2004, is acknowledged. The traversal is on the ground that all the species falls under the same field of searches. This is not found persuasive because considerations and searches that are required for the four embodiments with many structural variations would result in a significantly greater burden.

The requirement is still deemed proper and is therefore made FINAL.

2. The abstract of the disclosure is objected to because phrases that can be implied, such as "The present invention teaches ...", line 1 of the abstract, should be avoided; and legal phraseologies, such as the words "said" and "means", e.g. the word "means" in line 13 of the abstract, should not be used. Correction is required. See MPEP § 608.01(b).

3. In the specification:

Page 1, the patent number of the cited U.S. Patent titled "Hydraulic Draft Gear with Constant Force Device" is incorrect.

Pages 18-20, elements 160, 162, 164, 170 are described, but the same are not found in the instant drawings.

Proper correction is required.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cardwell (US 3,368,698) in view of Merker (US 5,529,194).

Cardwell discloses a draft gear assembly having features similar to that recited in the instant claims.

Regarding the diameter of the working end of the stem element being between .278 inches and .279 inches, consider lines 46-47, column 4 of Cardwell; wherein, it is indicated that stem element 44, including the working end thereof, has a diameter range of "approximately" 9/32 inch, and note that a diameter between .278 and .279 inches is equivalent to the approximately 9/32 inch described by Cardwell.

Regarding the instant claimed stationary plates having a Brinell hardness of between about 429 and 495, it is noted that Cardwell does not disclose the hardness of stationary plates 13; however, as matter of routine engineering design processes, it would have been obvious to one skilled in the art to select optimal levels of hardness for the components of the draft gear assembly of Cardwell, in corresponding to the expected levels of operating loads on the assembly, so as to achieve the expected performance thereof. In the instant case, it would have been obvious to one skilled in the art to make the stationary plates of Cardwell with a Brinell hardness of between about 429 and 495 so as to adequately withstand the operating load that would require such level of hardness for proper operation and durability.

Regarding the instant claimed center wedge and wedge shoes having an angle of about 53 degrees, consider Figure 3 of Merker, wherein the center wedge and wedge

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shoes having an angle of about 53 degrees. In view of Merker, it would have been obvious to one skilled in the art to modify the angle of the corresponding elements of Cardwell to be about 53 degree so as to achieve the expected performance thereof.

Regarding the instant claimed shock absorbing capacity increasing means, recited in claim 1, note lines 46-47, column 4 of Cardwell, which suggests that stem element 44, including the working end thereof, has a diameter range of "approximately" 9/32 inch; wherein, such range inherently has a lower end and a higher end of the range. Accordingly, when the draft gear assembly of Cardwell is equipped with a stem element 44 that has a small diameter in the lower end of said range, the assembly is considered to have an additional shock absorbing capacity increasing means, as in comparison to a similar draft gear of Cardwell that is equipped with a stem element 44 with a large diameter in the higher end of said range.

Regarding the instant claimed positioning means, as recited in claim 1, and the positioning means including a build-up portion, recited in claim 3, consider the positioning means 36 with build-up portion 38 of Merker. In view of Merker, it would have been obvious to one skilled in the art to modify the base of the housing structure of Cardwell to include positioning means with a build-up portion, in a manner similar to that taught by Merker, so as to better positioning associated components that engage the bottom of the housing.

Regarding the instant claimed number of fluid passages, recited in claims 4-5, consider passages 48 described in lines 10-25, column 3 of Cardwell. Note that when the number of passages 48 is two, the passages are equally spaced by being

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diametrically opposed; and when the number is more than two, it would have been obvious to one skilled in the art to apply the same equally spacing concept to other number of passages as well so as to maintain a balanced force distribution during operations.

6. Claims 11-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Le whose telephone number is 703-308-3663. The examiner can normally be reached on Mon-Fri (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark T. Le  
Primary Examiner  
Art Unit 3617

mle  
11/19/04